



BRIESE LAWYERS FACTSHEET

Estate Planning Testamentary Trusts



A Testamentary Trust is often a more effective alternative than making a direct gift to a person under a standard Will and has significant advantages in protecting your Estate.

A Testamentary Trust is a discretionary Trust, created in your Will, where a Trustee holds property, business or investments on trust for the benefit of specified beneficiaries.

The Trustee has the discretion to distribute income and capital of the Trust to the beneficiaries subject to any specific terms of the Trust which may, for example, preserve the capital or a portion of it.

The Trust comes into existence only upon your death.

Advantages of Testamentary Trusts:

1. Tax advantages - by distributing income between beneficiaries, the Trustee is able to manage the total income tax payable by the group. Under a Testamentary Trust, minors are treated as adults and obtain the benefit of the tax free threshold, low income rebates and varying tax brackets;
2. Protection from relationship breakdown - if a beneficiary is involved in matrimonial property proceedings or a de facto property claim, the Trust may be used to keep the inheritance separate from their own assets and thus quarantined from a claim by the separated spouse;
3. Protection from bankruptcy - if a beneficiary has financial difficulties, including bankruptcy, the assets held by the Trust will be protected from creditors;
4. If a beneficiary is under an incapacity, such as an intellectual handicap, alcohol or drug dependency, or it may just be that they cannot handle money, the gift can be controlled by others through the Trust;
5. You can still exercise some control over how the Trustee handles the Testamentary Trust and can preserve the capital;
6. Education - a more tax effective method of providing for payment of school and tuition fees for children/grandchildren;
7. Remarriage of spouse - where you wish to provide for your spouse, but may be concerned that the spouse may remarry and divert the family assets to the new family, or use the family assets in a risky or unprofitable venture at the suggestion of the new spouse, the gift is protected by the Trust;
8. Generational succession - a Trust can be used to protect the inheritance for your children and subsequent generations whilst still providing for your spouse/partner;
9. Your beneficiary's Estate - if your beneficiaries receive your Estate in a Trust, and it remains in a Trust, it cannot be subject to a Will challenge when they die as it will not be part of their Estate and the benefit of the Trust will automatically pass to their children (or siblings).



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BRIESE LAWYERS FACTSHEET Estate Planning - Testamentary Trusts



Only assets that are in the deceased person's name at the time of their death are included in the Trust. Therefore, it is important that insurance policies and ownership of jointly owned properties are reviewed by a Solicitor and consideration given as to whether they will form part of the Trust.

When considering a Testamentary Trust, it is important to note:

1. Common areas that require consideration are:
 - whether to have one or several Trusts established under a Will;
 - the selection of the Trustee/s;
 - the method of appointing replacement Trustees;
 - whether the beneficiaries be limited to your descendants only;
 - whether some classes of beneficiaries are restricted to income and some to capital; and
 - whether beneficiaries should include an expanded form so as to include related companies and Trusts (these provisions are commonly found in the normal Trading Discretionary Trust).
2. It costs more to have a Will which sets up a Testamentary Trust. There are usually some additional annual costs in operating the Trust, particularly in accounting expenses, however this only applies after you die; and
3. Should a spouse, child, or financial dependant contest the terms of your Will, your assets which form part of the Trust are treated the same as all other assets of the Estate for the purposes of an application for possible Family Provision claims.

Further details with respect to Estate Planning and Testamentary Trusts may be obtained by contacting one of our Solicitors, who can offer practical legal advice and guidance.

Here at Briese Lawyers we offer you the opportunity to look at areas of your life that are most important to you and tailor Estate Plans that meet your specific needs and the needs of your family.

Liability limited by a scheme approved under professional standards legislation



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